

AGENDA BILL APPROVAL FORM

Agenda Subject: Resolution No. 4530		Date: December 8, 2009
Department: Information Services	Attachments: Resolution No. 4530	Budget Impact:
Administrative Recommendation: City Council adopt Resolution No. 4530.		
Background Summary: Resolution No. 4530 extends the Comcast Franchise agreement for an additional five years from date of execution. It also institutes the requirement for a yearly technical audit by Comcast, defines PEG support and Channel locations, provides provisions for Annexations, cables to public buildings and includes language for competitive equity.		
T0104 -2 O4.1.4, A3.14		
Reviewed by Council & Committees: <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Arts Commission <input type="checkbox"/> Airport <input type="checkbox"/> Hearing Examiner <input type="checkbox"/> Human Services <input type="checkbox"/> Park Board <input type="checkbox"/> Planning Comm. </div> <div style="width: 45%;"> COUNCIL COMMITTEES: <input checked="" type="checkbox"/> Finance <input checked="" type="checkbox"/> Municipal Serv. <input type="checkbox"/> Planning & CD <input checked="" type="checkbox"/> Public Works <input type="checkbox"/> Other _____ </div> </div>		Reviewed by Departments & Divisions: <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Building <input type="checkbox"/> Cemetery <input checked="" type="checkbox"/> Finance <input type="checkbox"/> Fire <input checked="" type="checkbox"/> Legal <input checked="" type="checkbox"/> Public Works <input checked="" type="checkbox"/> Information Services </div> <div style="width: 45%;"> <input type="checkbox"/> M&O <input type="checkbox"/> Mayor <input type="checkbox"/> Parks <input type="checkbox"/> Planning <input type="checkbox"/> Police <input type="checkbox"/> Human Resources </div> </div>
Action: Committee Approval: <input type="checkbox"/> Yes <input type="checkbox"/> No Council Approval: <input type="checkbox"/> Yes <input type="checkbox"/> No Referred to _____ Until ____/____/____ Tabled _____ Until ____/____/____ <div style="text-align: right;">Call for Public Hearing ____/____/____</div>		
Councilmember: Pelozo		Staff: Rempher
Meeting Date: January 4, 2009		Item Number: VIII.B.1

RESOLUTION NO. 4 5 3 0

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE ADDENDUM IV TO THE CABLE FRANCHISE AGREEMENT BETWEEN THE CITY OF AUBURN AND COMCAST OF WASHINGTON

WHEREAS, the City of Auburn entered into a Non-Exclusive Franchise Agreement with TCI Cablevision pursuant to Resolution 2409, approved on May 3, 1993; and

WHEREAS, certain provisions of Section 5 and Section 8 of the Franchise were amended in Addendum I to the Franchise which was approved June 15, 1998 pursuant to Resolution 2972; and

WHEREAS, the date for construction and operation of a public access facility was extended from July 1, 1999 to September 1, 1999 in Addendum II to the Franchise which was approved June 21, 1999 pursuant to Resolution 3096; and

WHEREAS, this date was further extended to February 1, 2001 in Addendum III to the franchise which was approved November 1, 1999 pursuant to Resolution 3122; and

WHEREAS, Comcast of Washington IV, Inc. ("Comcast") is the successor in interest to TCI Cablevision and currently holds the above Franchise; and

WHEREAS, the Franchise expired on midnight June 30, 2008; and

WHEREAS, the City and Comcast have continued to operate under the Franchise while they have been in discussions regarding the terms under which the Franchise could be extended; and

WHEREAS, the City Council finds that the terms set forth in the attached Addendum III to the Franchise, which extends the Franchise for an additional five years, are in the best interest of the City and its citizens,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, HEREBY RESOLVES as follows:

Section 1. The Mayor and City Clerk of the City of Auburn, Washington, are hereby authorized to execute Addendum IV to the Non-Exclusive Franchise Agreement Between the City of Auburn, Washington and Comcast of Washington IV to Operate a Cable Television System Within the City of Auburn, Washington, a copy of which is attached hereto, marked as Exhibit "A" and incorporated herein by this reference.

Section 2. The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directives of this legislation.

Section 3. That this Resolution shall take effect and be in full force upon passage and signatures hereon.

Dated and Signed this _____ day of _____, 2009.

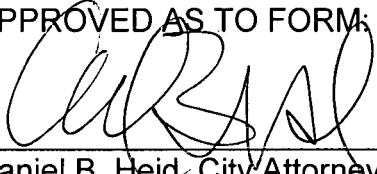
CITY OF AUBURN

PETER B. LEWIS
MAYOR

ATTEST:

Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:



Daniel B. Heid, City Attorney

EXHIBIT 'A'

ADDENDUM IV TO THE NON-EXCLUSIVE FRANCHISE AGREEMENT BETWEEN THE CITY OF AUBURN, WASHINGTON AND COMCAST OF WASHINGTON IV TO OPERATE A CABLE TELEVISION SYSTEM WITHIN THE CITY OF AUBURN, WASHINGTON

This ADDENDUM IV regarding extension of the Franchise Agreement and making various changes to the Agreement between the City of Auburn, Washington, and Comcast of Washington IV, and approved by the City Council pursuant to Resolution No. 2409 on May 3, 1993 and amended on June 11, 1998, and further amended on June 15, 1999, is hereby entered into between the CITY OF AUBURN, a Washington municipal corporation, hereinafter referred to as the "CITY" and Comcast of Washington IV, Inc. a Washington corporation, hereinafter referred to as "OPERATOR."

NOW, THEREFORE, the parties agree as follows:

Section I. For purposes of this Addendum IV, "Franchise" shall mean the Franchise Agreement approved by the City Council pursuant to Resolution No. 2409, as amended by Resolution No. 2972 and Resolution No. 3096.

Section II. Section 2, Length of Franchise, of the Franchise is hereby amended to read as follows:

Section 2 Length of Franchise.

This Franchise will be continued for five (5) years following the execution date this Addendum IV.

Section III. Section 5, Future Provision, of the Franchise is hereby amended to read as follows:

Section 5. Future Provisions.

A. The CITY and the OPERATOR acknowledge that the CITY should be provided with a cable system that has the same

EXHIBIT 'A'

Section IV. Section 6, Access Channels, of the Franchise Agreement is

hereby amended to read as follows:

Section 6. Access Channels

A. Upon completion of the upgrade conditions, the CITY shall be provided with three (3) access channels, one of which shall be capable of broadcasting live from City Hall. The CITY may initially share a common public access channel with other communities; however, the CITY may elect, at its option, to provide programming over an individual public access channel for the CITY's sole use.

B. Additional channels over and above those referenced above shall be made available for CITY purposes when any of the three (3) designated channels is in use for access purposes with programming during fifty percent (50%) of the hours between 10:00 A.M. and 10:00 P.M., during any consecutive ten (10) week period. The OPERATOR shall within six (6) months following a request by the CITY, subject to the restrictions above, provide another designated access channel for this purpose.

C. The OPERATOR shall continue to provide additional channels under the same conditions. Programming on additional channels shall be distinct and non-repetitive of the previous channel. If additional channels are designated for community use but after one year such channel(s) are not utilized at least twenty-five percent (25%) of the hours between 10:00 a.m. and 10:00 p.m. with programming, the access users will, within six (6) months of receiving written notice from the OPERATOR, group their programming into one contiguous block of time of their choosing. The remaining broadcast time on such channel shall then revert to the OPERATOR for its unrestricted use within the terms and conditions of this AGREEMENT.

D. PEG Support. Upon the effective date of this Addendum IV, the OPERATOR shall collect and remit to the CITY on a quarterly basis, at the same time as the franchise fee, \$0.35 per subscriber per month (the "PEG Fee") for PEG capital purposes from all subscribers paying for cable service. To the extent permitted by applicable law, the PEG Fee may be itemized on Subscriber on Subscriber billing statements. The PEG Fee shall not be treated as franchise fees for purposes of 47 U.S.C. § 542 or any other purpose, and shall at no time be offset or deducted from franchise fee payments made to the CITY under this franchise or applicable law.

In the event any payment required by the above paragraph

EXHIBIT 'A'

Section 11. Coverage.

The CITY shall be provided with cable television service in the entire franchise area. If such a condition does not now exist, the OPERATOR shall complete such wiring and be in a position to offer cable reception to all residents within twelve (12) months from the effective date of this AGREEMENT. Areas subsequently annexed shall be provided with cable availability within twelve (12) months of Council Approval of the annexation and written notice to the Operator Cable Service, subject to the terms in Section 13 herein.

Section VII. Section 15, Public Buildings, of the Franchise is hereby amended to read as follows:

Section 15. Public Buildings.

The OPERATOR shall provide, without charge for installation or monthly rate, basic service, one outlet, and converter, if needed, at such public buildings and schools as specified in Appendices "B" and "C" which are attached hereto and incorporated herein as well as other such buildings that may be constructed during the period of AGREEMENT that are passed by cable and within one hundred and fifty (150) feet of the trunk or distribution system.

The OPERATOR shall install and provide cable service within 180 days of the effective date of this Addendum III, at no cost to the CITY to the M&O Facility for Emergency Operation Center purposes, 1305 C Street SW, Auburn, Washington 98001. Within 180 days following construction completion, OPERATOR shall install and provide cable service at no cost to the CITY to the "Lakeland" Fire Station for Emergency Operations Center purposes, 182nd St. E. and 4th Ave. E.

Upon request through the designated CITY representative, the OPERATOR will voluntarily make available without charge, as long as the parties agree that it is economically feasible, a standard installation and a minimum of one outlet of Basic and Expanded Basic Cable Services to City administrative buildings as designated by the CITY (whether they are owned or leased), and fire station(s), police station(s), libraries, Access facilities and K-12 public School(s). The recipient of the service will secure any necessary right of entry. The Cable Service will not be used for commercial purposes, and the outlets will not be located in jail cells or areas open to the public, except for one outlet to be located in public lobbies in CITY buildings that will be used by the public for viewing. The CITY will take reasonable precautions to prevent any use of the OPERATOR's

EXHIBIT 'A'

generally equivalent taking into account any difference in the number of subscribers served, the number of PEG channels and aggregate support provided, the level of fees and taxes imposed, the term of the franchise, and all other circumstances affecting the relative burdens.

B. Notwithstanding any provision to the contrary, at any time prior to the commencement of a franchisee's thirty-six (36) month renewal window provided by 47 U.S.C. § 546, that a non-wireless facilities based entity, legally authorized by state or federal law, makes available for purchase by Subscribers or customers, Cable Services or multiple channels of Video Programming within the Franchise Area without a franchise or other similar lawful authorization granted by the CITY, then a franchisee shall have a right to request Franchise amendments that relieve the franchisee of regulatory burdens that create a competitive disadvantage to the franchisee. In requesting amendments, the franchisee shall file a petition seeking to amend the franchise. Such petition shall: (1) indicate the presence of such wireline competitor; and (2) identify all material terms or conditions which are substantially more favorable or less burdensome to the competitive entity. The CITY shall act on the petition within 120 days.

DATED THIS _____ DAY OF _____, 2009

City of Auburn

Comcast of Washington IV, Inc.

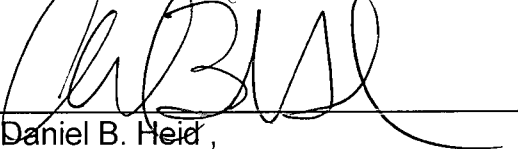
Peter B. Lewis , Mayor

By:
Its:

Attest:

By: _____
Danielle E. Daskam. City Clerk

APPROVED AS TO FORM:



Daniel B. Heid ,
City Attorney